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stockholders is itself conclusive against its necessity. 5 *Yale Law Journal,* 205. On the whole, the theory that the stock of dissenting shareholders may be seized by the majority under the power of eminent domain seems radically unsafe and unsound. If an actual public necessity exists, rather let the legislature directly determine that necessity, instead of permitting it to be determined by the majority of stockholders. Thus a few minority shareholders could not prevent the completion of a great public enterprise, such as a continuous line of railway formed from consolidating shorter lines.

COMPULSORY VACCINATION.—The opponents of vaccination as a preventive of smallpox have been trying for almost fifteen years to obtain assistance from the courts in their efforts to resist the enforcement of compulsory vaccination by school boards and other state agencies. The first American case which sustained the validity of such legislation was *Abeel* v. *Clark,* 84 Cal. 226, decided in 1890. No case has ever denied the right of the state to make vaccination compulsory when the disease was actually present or an epidemic was threatened. Some have held that these conditions must exist in order to justify the measure. See *State ex rel.* v. *Burdge,* 95 Wis. 390. Others have held that mere general authority to regulate the public health or to make suitable rules and regulations respecting the conduct of the public schools, would not of itself authorize compulsory vaccination except in cases of present emergency. *Potts* v. *Breen,* 167 Ill. 67; *Blue* v. *Beach,* 155 Ind. 121; *Matthews* v. *Board of Education,* 127 Mich. 530 (LONG and GRANT, JJ., dissenting); *Morris* v. *Columbus,* 102 Ga. 792.

A recent case decided by the Supreme Court of North Carolina has taken a much more liberal view respecting the rights of municipal boards to enforce compulsory vaccination under a grant of general authority. *Hutchins* v. *School Committee of Town of Durham* (1904), — N. C. —, 49 S. E. 46. And the court here expressly repudiated the limitation stated in *Potts* v. *Breen,* supra, and went even farther than *Bissell* v. *Davison,* 65 Conn. 183, which has heretofore been regarded as perhaps the broadest decision on this question.

But another feature of the *Hutchins* case is of interest. The court had recently decided in *State* v. *Hay,* 126 N. C. 999, that although no exception was stated in the regulation prescribing compulsory vaccination, the requirement nevertheless did not apply to one whose condition of health was such that vaccination would be dangerous; but the burden was upon the person seeking to escape vaccination to show a justification for non-compliance, and the sufficiency of the showing was for the jury, the person's own belief and the advice of his physician being non-conclusive. Hence an adequate showing of this character might be a complete defense to a criminal prosecution for failure to observe the regulation. But in the *Hutchins* case the action was mandamus, and it was sought to compel the admission into the public schools of the daughter of the plaintiff, who had not been vaccinated under the rule, by showing that her health was such that vaccination would be dangerous. But the court refused to approve this position, and said: "The fact that it would be dangerous to vaccinate the plaintiff's daughter, owing to her

physical condition, would be a defense for her to an order for general compulsory vaccination (*State* v. *Hay,* supra), but is no reason why she should be excepted from a resolution excluding from the school all children who have not been vaccinated. That she cannot safely be vaccinated may make it preferable that she herself should run the risk of taking the smallpox, but is no reason that the children of the public school should be exposed to like risk of infection, through her, or others in like case."

CONFIDENTIAL COMMUNICATIONS BETWEEN PHYSICIAN AND PATIENT.—This subject was fully considered in an article upon *The Physician as an Expert,* published in the MICHIGAN LAW REVIEW for May, 1904 (Vol. II, pp. 687-703). One phase of it, however, that is not there discussed, and that, so far as the writer has observed, had not, at the time of the publication of the article, been judicially determined, has recently been adjudicated by the Supreme Court of Michigan in the case of *Dick* v. *International Congress,* decided Dec. 7, 1904, and reported in 101 N. W. Rep. 564. The defendant in the case was a mutual benefit association. The husband of the plaintiff at the time of his death was a member of the defendant order, and as such was insured therein to the extent of one thousand dollars. His wife, the plaintiff, was his beneficiary, and after his death, the defendant having refused to recognize the validity of her claim to the insurance money, she brought suit and in the court below obtained a verdict and judgment. Upon appeal, the defendant contended that a verdict should have been directed in its favor, on the ground that the decision of the tribunals of the order against the claim was final. The majority of the court, speaking through Justice CARPENTER, sustained the lower court, but a dissenting opinion, in which Justice GRANT concurred, was filed by Justice HOOKER.

The by-laws of the defendant order provide for the adjudication by a supreme board of trustees in the first instance, and upon appeal, by the supreme body of the order, of all death claims; that the decisions of the order in regard to the death claims shall be final and binding upon every member and his beneficiaries, and that no suit at law or in equity in regard to such a claim shall be commenced or maintained by any member or beneficiary against the order. It was the contention of the defendant that deceased had obtained his insurance by making false statements in regard to the condition of his health. Upon the hearing before defendant's board of trustees, several affidavits tending to prove the validity of the claim were introduced. The only other evidence was the statement of the general manager of the defendant to the effect that the physician of the deceased had reported to him a conversation with deceased from which it would appear that deceased must have known at the time of his application for insurance that his statements in regard to the condition of his health were false. This testimony was objected to by the representative of the claimant as incompetent, hearsay and privileged, but it was received and served as the only basis for the rejection of the claim. The claim upon appeal to the supreme body of the order was heard upon the same testimony as that introduced before the board of trus-